

McDowell, *ubi supra*, and came to the conclusion that the law which he had to interpret was not the same as the law which determined that case. He stated the object of the Registration of Deeds Ordinance as "to prevent as far as possible the making of unregistered and secret assurances of every kind, by giving priority to every kind of registered assurance". He too held that a writ of execution was an "assurance for valuable consideration".

The appellants, necessarily, invited their Lordships to disagree with this decision and indeed to overrule it. But even if it stood alone, their Lordships would be reluctant to take this course. The construction placed upon the Ordinance, in particular upon section 2 (definition of assurance) and section 7 (3), appears in itself at least a reasonable construction, and if the matter were doubtful, their Lordships would be inclined to favour that construction which gave strength to a system of priority by registration furthering the policy to which Collyer A.C.J. referred. But the decision does not stand alone; indeed its roots in the legal system of Singapore have been greatly fortified in the passage of time.

In the Civil Procedure Code of 1907 there appears the following section:

"619.—(1) Where the property to be seized consists of immovable property or any interest therein, either at law or in equity, the seizure shall be made by registering, under "The Registration of Deeds Ordinance 1886", an order of court, signed by the Registrar and sealed with the seal of the court, attaching the interest of the judgment debtor in the property described in the order.

(2) the order shall be made *ex parte* by the Registrar on a written requisition by the Sheriff, and shall be deemed to be an order of court by which the property in it is affected, and an assurance for valuable consideration within the meaning of "The Registration of Deeds Ordinance 1886".

This section appears to be a legislative endorsement of the decision in *Fung's* case — expressly of that part of it by which an order of attachment of immovable property was held to be an assurance for valuable consideration, and by implication of the decision as a whole.

In 1916 the case of *Ng Boo Bee v. Khaw Joo Choe & Ors.*⁽⁵⁾ was decided by Sproule J. and by the Court of Appeal. There the contest was between a judgment creditor who had registered an order of attachment, and persons to whom the debtor had conveyed the land, — who had paid the purchase money and entered into possession but not prior to the registration of the order registered their conveyance. It was held that at the date of the seizure there was no interest of the debtor to be seized and that the Registration of Deeds Ordinance did not postpone the conveyance to the seizure. The courts considered *Fung's* case, *Eyre v. McDowell* and also the English case of *Jones v. Barker, ubi supra*. Though, on the facts there before the court, the decision was given against the judgment creditor, no reservation was expressed as to the correctness of *Fung's* case. Indeed Sproule J. said that the decision was "unquestionably right" and asked who could doubt that a registered writ of execution had priority over an earlier unregistered charge. No subsequent authority was

cited to their Lordships in which any doubt was cast upon the decision in *Fung's* case and it was described as "still good law" in the judgment of the Federal Court.

Reliance was placed by the appellants upon the circumstance that when the Civil Procedure Code 1907 was, in 1934, replaced by Rules of the Supreme Court, the provisions contained in section 619 of the Code (quoted above) were not repeated, and nothing to a similar effect now appears in Order XXI. This it was said indicated a legislative intention to repudiate *Fung's* case, or at least to discard that portion of it which decided that a writ of attachment, or of seizure and sale, is an "assurance for valuable consideration". Their Lordships do not consider that such a conclusion ought to be drawn. The omission of what was a provision of substantive law, by that time well settled, from a set of new procedural rules appears to their Lordships perfectly natural, and some much more definite indication would be required to produce the result of, in effect, overruling a decision of the Court of Appeal, endorsed as in their Lordship's view it was, in *Ng Boo Bee's* case in 1916.

In their Lordship's opinion *Fung's* case should be accepted as good law. As the preceding analysis has already made clear, that case also decided that an order of attachment or of seizure and sale is an "assurance for valuable consideration" within the meaning of section 7 (3) of the Registration of Deeds Ordinance, a point expressly endorsed (as made "very clear" by Collyer A.C.J.) by Ebdon J. in *Ng Boo Bee's* case. Their Lordships consider that this conclusion ought also to be accepted as correct and find it unnecessary to attempt a fresh analysis of the nature of the consideration provided.

Their Lordships will, for these reasons, dismiss this appeal. The appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Parker, Garrett & Co.; Coward, Chance & Co.*

COOPERATIVE EXPORTVERENIGING "VECOFA" U.A. v. MAHA SYNDICATE

[O.C.J. (Ong Hock Sim J.) December 1, 1969]

[Penang — Civil Suit No. 264 of 1963]

Bills of Exchange — Acceptors — Liability — "D/A, on arrival of steamer" — Whether conditional "on arrival of steamer".

The defendants were acceptors of 3 bills of exchange amounting to \$69,750.28, which the plaintiffs claim in this action with interest. The defendants admitted that they had signified acceptance of the bills but contended that each of the three documents having been drawn and expressed "At 60 days sight D/A, on arrival of steamer, pay this first of exchange...to the order of Amsterdamsche Bank N.V. Bijbank Rotterdam...for collection" the said documents were not an unconditional order to pay on demand or at a fixed determinable future time but were expressed to be payable on a contingency and were therefore not bills of exchange.

Held: (1) the operative words in each bill are "D/A" which mean "documents released against acceptance" therefore the defence contention that payment was conditional "on arrival of the steamer" failed;

(2) in this case the acceptance by the defendants of the documents bound them to pay.

Case referred to:-

(1) *Cossey v. McManus* (1919), 52 N.S.R. 235 (Canadian).

CIVIL SUIT.

Lim Kean Siew for the plaintiffs.

V. K. Palasuntharam for the defendants.

Cur. Adv. Vult.

Ong Hock Sim J.: The plaintiffs claim against the defendants as acceptors of:-

- (1) Bill of Exchange No. 22396 for £2,200.0.0. (equivalent to MS18,857.14) with interest at 5% per annum from 29.5.63 to date of writ, now overdue and unpaid, dated the 5th day of March 1963 drawn by the plaintiffs upon the defendants payable at 60 days sight D/A on arrival of steamer to the order of Amsterdamsche Bank N.V. (the plaintiffs' bankers) which said bill was delivered by the plaintiffs to the said bank who upon same being dishonoured returned it to the plaintiffs.
- (2) Bill of Exchange No. 22607 for £2,375.0.0. (equivalent to MS20,357.14) with interest at 5% per annum from 24.6.63 to date of writ, now overdue and unpaid, dated the 4th day of April, 1963 drawn by the plaintiffs upon the defendants payable at 60 days sight D/A on arrival of steamer to the order of Amsterdamsche Bank N.V. (the plaintiffs' bankers) which said bill was delivered by the plaintiffs to the said bank who upon same being dishonoured returned it to the plaintiffs.
- (3) Bill of Exchange No. 22650 for £3,562.10.0. (equivalent to MS30,536.00) with interest at 5% per annum from 4.7.63 to date of writ, now overdue and unpaid, dated the 10th day of April, 1963 drawn by the plaintiffs upon the defendants payable at 60 days sight D/A on arrival of steamer to the order of Amsterdamsche Bank N.V. (the plaintiffs' bankers) which said bill was delivered by the plaintiffs to the said bank who upon same being dishonoured returned it to the plaintiffs.

The total of the three bills amounts to \$69,750.28 which the plaintiffs claim in this action with interest at the rate of 5% per annum from date of writ until payment.

In their defence, the defendants admit that they had signified acceptance of all three bills but contend each of the three documents having been drawn and expressed "At 60 days sight D/A, on arrival of steamer, pay this first of exchange... to the order of Amsterdamsche Bank N.V. Bijbank Rotterdam ... for collection" the said documents were not an unconditional order to pay on demand or at a fixed or determinable future time but were expressed to be payable on a contingency and were therefore not bills of exchange. The defendants admit that the plaintiffs had made a demand for payment on the 9th September, 1963 and further admit that neither of the two partners of the defendant firm had paid the sums demanded on the said three documents or any of them.

Evidence was given on behalf of the plaintiffs by an assistant in the Mercantile Bank in charge of the bills section and an officer in the bills section of the

A Hongkong & Shanghai Bank and I accept their evidence that the operative words are "D/A" which means "documents released against acceptance" and accordingly I disagree with the defence contention that payment was conditional "on arrival of the steamer", which is the first limb of the defence. On the second limb defence counsel submitted that "even if it is a bill, the defendants had asserted that the sum was not payable to the plaintiffs as it has not been endorsed in favour of the plaintiffs." This was not raised in the defence which had admitted that the defendants had signified acceptance and it seemed clear that the defence is bound by the pleadings. The case of *Cossey v. McManus*⁽¹⁾ is authority, if this were necessary, for saying that endorsement was not required to entitle action by the drawer. It ruled that by the mere fact of acceptance an undertaking by the acceptors to pay the bill according to its tenor was implied, which was enforceable by the holder though it had not been endorsed.

B On the pleadings therefore the plaintiffs are entitled to judgment and the matters raised at the hearing on behalf of the defence would appear to seek to confuse the issue before the court, that the acceptance by the defendants of the documents bound them to pay. There will therefore be judgment with costs for the plaintiffs for the sum claimed with interest at the rate of 5% per annum from the date of the writ to date of payment.

C *Judgment for the plaintiffs.*

Solicitors: *Lim Kean Siew & Co.; V. K. Palasuntharam.*

GAN POH v. UNION OMNIBUS CO. LTD.

[F.C. (Ong C.J. (Malaya), Gill & Ali F.J.J.) December 9, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 60 of 1969]

G *Master and Servant — Claim for damages for injuries sustained in course of employment — Alleged breach of statutory duty by employer — Negligence of employer — Workmen's compensation — Whether injury caused by accident arising out of employment — Workmen's Compensation Ordinance, 1952, ss. 4, 8 & 41 (2).*

H The plaintiff in this case was a bus conductor employed by the respondents. He was suffering from a heart disease and suffered a stroke while working. It was alleged that the respondents were in breach of their statutory duty in requiring the plaintiff to work for more than 6 days and more than 48 hours in a week in contravention of the provisions of sections 58 and 59 respectively of the Employment Ordinance, 1955. The learned trial judge ([1969] 1 M.L.J. 186) dismissed the claim as he held that the plaintiff had failed to show that the injuries sustained by him were due to the fault of the respondents and he also refused to award compensation under the Workmen's Compensation Ordinance, 1952. The plaintiff appealed. He died before the appeal came on for hearing, and the appeal was prosecuted by his widow.

I Held: (1) the learned trial judge was correct in dismissing the plaintiff's claim on the grounds of breach of statutory duty and of negligence;